HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL Nos.962 AND 963 OF 2005

WRIT APPEAL No.962 OF 2005

Between:

Panjerla Bapaiah, S/o. Manikyam,

aged 82 years, resident of Tanuku,

West Godavari District & 12 others .. Appellants

AND

Manne Musalaiah (died) per his LRs.

Manne Nageswara Rao, S/o. Manne Musalaiah,

aged 40 years, resident of Chakradevarapalli,

Jangareddy Gudem, West Godavari District & 9 others

.. Respondents

Counsel for the Appellants : Sri M.S.R. Subrahmanyam

Counsel for Respondents 1 to 5 : Smt. A. Chaya Devi
Counsel for Respondents 6, 7 & 8: G.P. for Revenue
Counsel for Respondents 9 & 10: None appeared.

WRIT APPEAL No.963 OF 2005

Between:

Panjerla Bapaiah, S/o. Manikyam, aged 82 years,

resident of Tanuku, West Godavari District. .. Appellant

AND

Vitla Venkanna S/o. Papaiah,

aged about 71 years & others .. Respondents

Counsel for the Appellant: Sri M.S.R. Subrahmanyam

Counsel for Respondents 1 to 7 & 11 to 14: Smt. A. Chaya Devi
Counsel for Respondents 8 to 10: G.P. for Revenue

COMMON JUDGMENT

23rd January, 2006

Per G.S. Singhvi, CJ

Feeling dissatisfied with a rather innocuous order passed by the learned Single Judge in W.P. Nos.25423 and 25522 of 1998, whereby he granted leave to the writ petitioners (private respondents herein) to file appeal against order dated 26-07-1976 passed by the Tahsildar under Section 3 of Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Act'), the appellants have filed these appeals under Clause 15 of the Letters Patent.

The private respondents claim to have purchased land measuring Ac.12-50 cents comprised in Revenue Survey No.183 situated in Village Chakradevarapalli sometime in September 1971. Their vendors are said to have purchased different parcels of the land vide sale deeds dated 3-7-1940, 15-7-1942 and 7-10-1951. The appellants, who are said to have purchased the land in question after passing of order of determination by Inams Deputy Tahsildar under Section 3 of the Act, filed applications for grant of pattas. The competent authority rejected their applications. On appeal, the matter was remanded to Inams Deputy Tahsildar for fresh adjudication. The latter again

rejected the applications. This time, the appellate authority allowed the claim of the appellants and ordered grant of patta in respect of 1/3rd of the land. Revisions filed by the respondents were dismissed by the Commissioner of Survey, Settlement and Land Records, Andhra Pradesh vide his order dated 5-8-1998.

Respondents challenged the aforementioned orders of the appellate and revisional authorities by contending that the land in question was never treated as Inam lands and, therefore, there was no question of granting pattas to the non-petitioners. The stand taken by the appellants was that the land in question is Inam land and order dated 26-7-1976 passed by Inams Deputy Tahsildar for determination of the status of the land had become final because the same was not challenged by any aggrieved person by filing appeal.

The learned Single Judge noted that Inams Deputy Tahsildar had passed order dated 26-7-1976 determining the character of the land in dispute as Inam land; that order dated 26-7-1976 had not been questioned by filing appeal, but gave liberty to the writ petitioners (private respondents herein) to file appeal within six weeks by assuming that the order of determination passed by Inams Deputy Tahsildar has not been communicated to them. The operative part of the order passed by the learned Single Judge reads as under:

> "Hence, the writ petition is disposed of directing that in case the petitioners prefer an appeal within six weeks from today, against the order dated 26-7-1976, and on verification of records by the concerned authority, it is found that the order under sub-section 3 of Section 3 of the Act has not been communicated to the petitioners, the appeal shall be entertained as having been filed within limitation. If it emerges that such an order has been communicated to the petitioners, the appellate authority shall be entitled to take its own decision in this regard. All the contentions touching on the merits of the case are left open. No costs."

Learned counsel for the appellants argued that order dated 26-7-1976 passed by the Inams Deputy Tahsildar on the basis of suo motu proceedings initiated under Section 3 (1) of the Act had become final more than 29 years ago and the learned Single Judge committed a grave illegality by giving liberty to the private respondents to file appeal. Learned counsel emphasized that order of

determination was passed by Inams Deputy Tahsildar after holding enquiry in accordance with the rules of natural justice and after following the procedure prescribed under Section 3 of the Act and, as no appeal was filed against that order within 60 days, the same will be deemed to have become final. Learned counsel relied on the decision of a Division Bench of this Court in **Sri Malleswara Swami Vari Temple v. Juttiga,** and argued that the alleged failure of Inams Deputy Tahsildar to ascertain the identity of the interested persons for the purpose of issuing notice under Rule 3 (5) of Andhra Pradesh (Andhra Area) Inams Abolition and Conversion into Ryotwari Rules, 1957 (for short 'the Rules') cannot be made a ground for giving liberty to the private respondents to challenge order dated 26-7-1976.

Learned counsel for the contesting respondents supported the order under challenge and argued that the learned Single Judge did not commit any error by giving liberty to his clients to file appeal within six weeks. He emphasized that even though the private respondents were in possession of the land, notice of the suo motu proceedings was not given to them by the Inams Deputy Tahsildar and order dated 26-7-1976 was not communicated to them and, therefore, no illegality has been committed by the learned Single Judge by giving them liberty to file appeal.

We have considered the respective submissions and carefully perused the record. The question whether order dated 26-07-1976 passed by the Tahsildar for determination of Inam lands was passed after complying with the procedural requirements contained in sub-sections (2) and (3) of Section 3 of the Act need not detain disposal of these appeals because the only issue which merits consideration is whether the learned Single Judge erred in granting liberty to the writ petitioners to file appeal against order dated 26-07-1976.

Sub-sections (1) to (5) of Section 3 of the Act and Rule 3 (5) of the Rules, which have bearing on the decisions of these appeals read as under:

Section 3 (1) to (5) of the Act:

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"1) As soon as may be, after the commencement of this Act, the Tahsildar may **suo motu** and share on application enquire and determine —

i. whether a particular land in his jurisdiction is an inam land;

ii. whether such inam land is in ryotwari, zamindari or inam village;

iii. whether such inam land is held by any institution.

2) Before holding such an enquiry, Tahsildar shall cause to be published in the village or town where the inam lands are situate a notice in the prescribed manner requiring every person or institution claiming an interest in any such inam land, to file before him, a statement of particulars in respect of items (i), (ii) and (iii) in sub-section (1) within the prescribed time.

3) The Tahsildar shall thereafter give the persons or institutions concerned a reasonable opportunity of adducing any evidence in support of their cases and may also examine any relevant document in the possession of the Government and give his decision in writing in regard to items (i), (ii) and (iii) in sub-section (1) and communicate the decision to the persons or institutions concerned.

4) Any person or institution aggrieved by
a decision of the Tahsildar under sub-section (3), may appeal to the Revenue Court within sixty days from the date of communication of the decision and the Revenue Court may after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders on the appeal as it thinks fit.

5) The decision of the Revenue Court under sub-section (4), and in case no appeal is filed, the decision of the Tahsildar under sub-section (3) shall be final.

Rule 3 (5) of the Rules:

5) A copy of the notice referred to in sub-rule (2) shall also be served on the person or institution, if any, making an application under sub-section (1) of Section 3, and on all other persons known or believed to be interested in the lands specified in the notice."

A conjoint reading of the provisions reproduced above makes it clear that

on initiation of suo motu proceedings, the Tahsildar concerned is required to get published in the village or town where the Inam lands are situate a notice in the prescribed manner to enable every person or institution claiming interest on any such Inam land to file a statement of particulars in respect of 3 items specified in sub-section (1) of Section 3 of the Act. He is then required to give reasonable opportunity to the persons or institutions concerned to adduce evidence in support of their case. The Tahsildar can examine the relevant government records and then pass appropriate order, which is required to be communicated to the persons or institutions concerned. The last part of sub-section (3) of Section 3 of the Act imposes a duty on the Tahsildar concerned to communicate the decision to the person or the institution concerned. Under sub-section (4) of Section 3 of the Act, any person or institution aggrieved by the decision of the Tahsildar can file an appeal before the Revenue Court within 60 days from the date of communication of the decision. If expression "within 60 days from the date of communication of the decision" appearing in sub-section (4) is read in conjunction with the duty cast on the Tahsildar under sub-section (3) to communicate the decision to the persons or institutions concerned, it becomes clear that the period of limitation specified in sub-section (4) commences not from the date of decision, but the date of its communication. This necessarily means that if the order is not communicated to the person or institution, who may feel aggrieved by the decision of the Tahsildar, the period of limitation cannot be said to have commenced. This view of ours finds support from the judgment of the Supreme Court in **Harish Chandra v. Dy.L.A. Officer**. In that case, the Supreme Court interpreted the expression "the date of Collector's award" appearing in Proviso (b) to Section 18 of the Land Acquisition Act, 1894. It was argued on behalf of the respondents that the date of award means the date on which award is actually made and not the date on which it is communicated or is known by the party concerned. While rejecting this argument, the Supreme Court observed as under:

> "Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive

communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector under S.12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fairplay and natural justice. Therefore, the expression "the date of the award" used in proviso (b) to S.18 (2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector's award used in the proviso to S.18 in a literal or mechanical way."

The judgment of the Division Bench in **Sri Malleswara Swami Vari Temple v. Juttiga**[1] (supra) does not have any bearing on this case. The question considered in that case centered round the interpretation of Rule 3 of the Rules. The Division Bench held that the Tahsildar was not required to make investigation about the identity of the affected persons and then give notice to them. The Division Bench was neither called upon to do so nor did it interpret sub-sections (3) and (4) of Section 3 of the Act. Therefore, the ratio of that judgment cannot be relied for the purpose of nullifying the order of the Single Bench.

In view of the above, we hold that the learned Single Judge did not commit any error by giving liberty to the writ petitioners to file appeal against order dated 26-7-1976 passed by Inams Deputy Tahsildar and the appeals are liable to be dismissed. Ordered accordingly.

However, keeping in view the observations made by the learned Single Judge, we consider it necessary to clarify that the appellate authority shall have to first decide the question whether or not order dated 26-7-1976 was communicated to the writ petitioners, who had purchased part of the Inam land in 1971. This shall be done on the basis of the evidence which the parties may adduce and consideration of the records of the Inams Deputy Tahsildar.

The question whether the Tahsildar was required to issue personal notice to the persons including the writ petitioners as per the requirement of sub-rule (5) of Rule 3 of the Rules will be gone into by the appellate authority only if it feels convinced that the appeal preferred by the petitioners is within limitation.

With the above observations, the appeals are dismissed.

G.S. SINGHVI, C.J.

Date: 23-01-2006

G. BHAVANI PRASAD, J

PV / svs